The wife and a friend testified to the sending of a letter asking for such order, and to the receipt of a letter and the order in reply. The appellee, who was illiterate and unable to write, claimed that the order was forged but the court held that the evidence was sufficient to warrant the submitting of the paper to the jury, they to determine upon all the proof whether it was authentic or not; that while the contents of the letter were not competent, being a privileged communication between husband and wife, it was proper to show, by the friend at least, that the letter was sent by the wife, asking for the order, and that the reply came, enclosing it as stated.

It would seem both upon reason and authority that the presumption of authority in the agent of the sender in the case of reply letters rested upon the same grounds as the presumption of genuineness when the reply letter is written by the sendee of the previous letter, and the additional reason for this, given by the court in the principal case, is an important one. With the authority of the agent presumed, it is an easy and natural step to say that proof that signature is not in the handwriting of the principal, does not affect the presumption of the genuineness of the reply letter. For if the agent is authorized to sign the name of his principal, proof that the signature is not in the handwriting of the principal would have no weight in disproving that authority. And in the absence of further evidence against the genuineness of the letter and of the authority of the agent, the presumption of both genuineness and authorization would quite naturally stand. L. H. L.

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A NOVEL CASE UPON THE QUESTION OF WHAT CONSTITUTES FORMER JEOPARDY.—A prisoner was put on trial for murder in the first degree, and his insanity at the time of trial was set up in defense; the jury was instructed by the trial judge to pass on both the questions of his guilt of murder and of his sanity at the time of trial. A verdict was returned (against the objection of defendant) that the prisoner was guilty of murder in the first degree and was insane at the time of trial; the jury was then discharged, and the prisoner was committed to an insane asylum. Later he was returned to the county prison by the superintendent of the insane asylum, who certified that he was sane and no longer in need of treatment; thereafter the court on its own motion set aside the verdict and granted a new trial (against the prisoner's objection). Now comes the question: Can the prisoner again be put on trial upon the same indictment, or does his former jeopardy entitle him to a discharge? This interesting situation arose recently in *Commonwealth* v. *Endrukat* (Pa. 1911) 80 Atl. 1049.

The court said, "though the question raised is a new one, the answer to it is old," and (after holding it proper to submit to the jury both the questions of guilt and insanity) said that a man insane at the time of trial can not be tried, which is true. *Reg.* v. *Berry,* 1 Q. B. D. 447; CLARK'S CRIM. LAW, p. 61, 4 BL. COM. 24; *State* v. *Pritchett,* 106 N. C. 667; and therefore (said the court in the principal case): "The verdict of guilty of murder of the first degree ought not to have been accepted by the court, but should have been treated as a nullity. * * * It was no trial at all on the charge against him,

and he was no more in jeopardy after the jury had been sworn than he was before he had been called upon to plead," and that where the court accepts a verdict which the jury is powerless to render the court may, through its inherent power to correct errors, set aside the verdict and grant a new trial. But did the court have the power to set aside the verdict and to grant a new trial against the objection of the defendant? In *Com.* v. *Loud,* 3 Metc. 328, 37 Am. Dec. 139, Beale's cases 72; ROOD'S DIG. CRIM. L., p. 308 the court said, "The judgment that defendant was guilty, though upon erroneous proceedings, is good till the same be reversed. This rule of criminal law is well settled. It was the right and privilege of the defendant to bring a writ of error and reverse that judgment;—but he might well waive the error and submit to and perform the judgment and sentence without danger of being subjected to another conviction and punishment for the same offense, *Vaux's Case,* 4 Co. 45; 2 Hale P. C. 251; 2 Hawk., c. 36, § 10 *et seq.*" Also *Davis* v. *State,* 37 Tex. Cr. R. 359, 39 S. W.. 937. In *Mixon* v. *State,* 35 Tex. Cr. R. 458, the court said: "If the prosecution has once placed a defendant upon trial, and the court is one of competent jurisdiction to try such offense as charged, and a jury has rendered a verdict of not guilty, no matter how irregular the procedure, the State can never again place the defendant on trial for that offense." See *People* v. *Webb,* 38 Cal. 467. In *State* v. *Snyder,* 98 Mo. 555, it was held that when a verdict is set aside by the court "on its own motion" against the consent of the accused a plea of former jeopardy is admissible. The court may grant a new trial of its own motion unless to do so will put an additional burden upon the wrongdoer. If the trial has resulted in acquittal, error or no error, the prisoner is free of that charge. *Com.* v. *Gabor,* 209 Pa. 201.

From these cases we deduce that a man may have been put in jeopardy though there is error in the proceedings and that he may waive the error and insist upon the jeopardy. Of course the guaranty against second jeopardy is for the benefit of the accused, and being for his benefit he may waive it. If the jury brings in a defective verdict, it is equally in the power of the prisoner and of the prosecuting attorney to have it set aside; suppose the prisoner chooses not to interfere, but lets a defective verdict be entered against him, he waives the objection of being again placed in jeopardy. 1 BISHOP, CRIM PROC., § 842. But in the principal case the defendant objected to the returning of the verdict, nevertheless the court accepted it, and though such acceptance may have been erroneous, was not the defendant put in danger? But was this verdict simply erroneous or was it totally null and void? The general rule is that if a person is once placed upon trial before a competent court and jury, upon a valid indictment, jeopardy attaches unless the jury be discharged from rendering a verdict by legal necessity or by his consent; or in case a verdict is rendered, unless it is set aside at his instance. *People* v. *Webb,* 38 Cal. 467; *People* v. *Horn,* 70 Cal. 17; CLARK'S CRIM. L., p. 432. In the principal case the court had jurisdiction of the defendant and of the offense, the indictment was proper and the jury was competent and charged with his deliverance. The jury had the power to render the verdict it did. It could find that the defendant was guilty of murder, or that he was

insane. It was simply error for the jury to return the double verdict which it did. True, it has been held that where a verdict is so defective that the court can not tell for what offense to pass judgment, the verdict may be set aside even against the objection of the defendant. *State* v. *Redman,* 17 Ia. 329. But we find no such question raised in the principal case. The court committed the prisoner to the asylum. How can it be said that there was no danger of a sentence on the verdict of guilty of murder?

L. F. M.